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No. 994

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

WILLIAM ERIC FOWLER,
Petitioner,

v.

RAYMOND H. PILSON, *et al.*

BRIEF OF RAYMOND H. PILSON, ETHEL S. PILSON AND PAUL W. SAMPSELL, TRUSTEE IN BANKRUPTCY OF RAYMOND H. PILSON, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARTHUR HELLEN,
Attorney for Respondents
Raymond H. Pilson, Ethel S. Pilson and Paul W. Sampsell Trustee in Bankruptcy of Raymond H. Pilson.
Colorado Building,
Washington, D. C.

PRESS OF FRANC. E. SHEIRY WASHINGTON, D. C.

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STATEMENT OF FACTS.

On October 23, 1930, one G. B. Ahlmann recovered a judgment against Raymond H. Pilson in the Superior Court of Los Angeles County, California. Writ of Execution was issued and duly returned unsatisfied, no appeal was taken and no payment has been made on account. Subsequent to

its recovery, the judgment was assigned to William Eric Fowler, the petitioner herein. (R. 8)

On November 13, 1937, petitioner as assignee filed this action in the District Court of the United States for the District of Columbia based on that judgment, the defendants being Raymond H. Pilson and the Trustees under the will of Benjamin F. Pilson, late of the District of Columbia, deceased. Petitioner alleged that Raymond H. Pilson had a substantial interest in the estate of the testator, his grandfather. The purpose of the action was to have the California judgment decreed to be a lien upon and against that interest. (R. 2)

The complaint alleged that if Pilson then had property in California, petitioner under Section 685 of the California Code of Civil Procedure could have execution issued and, therefore, the judgment was not barred in the District of Columbia, particularly by Section 343, Title 24, D. C. Code. (R. 2)

On December 30, 1937, petitioner alleged in an amended complaint that Pilson in April, 1932, executed two certain instruments purporting to assign his interest in the above estate to his mother, Ethel S. Pilson, and that said instruments were void and of no effect. Ethel S. Pilson was made a party defendant. (R. 3)

Defendants, Raymond H. Pilson and Ethel S. Pilson answered, denying that the judgment was in full force and effect and setting up as a defense on the merits that the action was barred by Section 343, Title 24 of the D. C. Code and Sections 335 and 336 of the California Code of Civil Procedure. (R. 3-4)

The Trustees of the Benjamin F. Pilson Trust set up as a defense on the merits the same Limitations Statutes. (R. 4)

Prior to the hearing on the merits a written stipulation was entered into by all the parties, which in part was as follows (R. 5-6):

> "3. Said Ethel S. Pilson waives any rights by reason of said assignments and makes no claim thereunder; and said plaintiff and said defendants agree that the assignments shall be considered and treated as though the same had not been made."
>
> "7. That the sole issue to be litigated herein is whether the judgment described in the Bill of Complaint is barred by the Statute of Limitations."

Subsequently, Raymond H. Pilson filed a voluntary petition in bankruptcy, Paul W. Sampsell was appointed Trustee, qualified as such and by leave of court intervened and became a party defendant. (R. 9)

ARGUMENT.

The facts are not in dispute. This is an action in the District of Columbia on a California judgment. The judgment was obtained in 1930 and suit was instituted in 1937. In spite of the involved reasoning in the petition and brief, the sole issue is whether such action is barred by Section 343, Title 24, District of Columbia Code, which is as follows:

> "Foreign Judgments.—Every action upon a judgment or decree rendered in any State or Territory of the United States or in any foreign country shall be barred if by the laws of such State, Territory, or foreign country such action would there be barred and the judgment or decree be incapable of being otherwise enforced there."

For a determination of this question reference to the appropriate California statutes is obviously necessary.

Sections 335 and 336, California Code of Civil Procedure, are as follows:

"335. PERIODS OF LIMITATION PRESCRIBED. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows: (Enacted 1872).

"336. WITHIN FIVE YEARS. Within five years: 1. An action upon a judgment or decree of any court of the United States of any state within the United States * * * (Enacted 1872; Amended by Code Amdts. 1873-74, p. 291)."

Clearly under these sections and their interpretation by the California Courts, had action been instituted in California on the date the suit was filed in the District of Columbia such action would be barred.

Mason v. Cronise, 20 Cal. 211;
Simpson v. Simpson, 21 Cal. App. 150, 131 P. 99;
Murphy v. Davids, 55 Cal. App. 416, 203 P. 802.

However, petitioner asserts that by reason of Section 685 of the California Code of Civil Procedure (R. 2-3), although he took no step under it, he may maintain this action in the District of Columbia. This contention is at variance with the purpose of the Section and with the California cases interpreting it. The effect of this section is simply to enable a judgment creditor after the lapse of five years to petition the Court in which the judgment was rendered for authority to have execution issued. The privilege of proceeding under this section does not render the judgment enforceable. Whether or not the judgment may be enforced, to the limited extent set forth in the section, is entirely dependent upon the favorable exercise of a discretion lodged by statute in the trial court in California.

McClelland v. Shaw, 23 Cal. App. (2) 107, 72 P. (2) 225;
Shields v. Superior Court, 138 Cal. App. 151, 31 P. (2) 1045;
Faias v. Superior Court, 133 Cal. App. 525, 24 P. (2) 567;

Doehla v. Phillips, 151, Cal. 488, 91 P. 330;
Thomas v. Lally, 28 Cal. App. 308, 152 P. 53.

At the time suit was commenced in the District of Columbia this judgment was dormant.

Faias v. Superior Court, supra;
Tolle v. Doak, 12 Cal. App. (2) 195, 55 P. (2) 542.

The time to which Section 343 of the District of Columbia Code relates is the date of the commencement of the action, not to the possibility of enforcement at some future time. This judgment was "incapable of being otherwise enforced" in California on the date suit was filed.

Chapman v. Chapman, 48 Kan. 636, 29 P. 1071;
General Electric Co. v. Hurd, 171 F. 984;
Swift & Co. v. Weston, 88 Mont. 40, 289 P. 1035;
Tourtelet v. Booker, 160 S. W. 293.

Petitioner's contention is that because of the possibility of enforcement by execution under Section 685 of the California Code, although such a method may never be asked for or granted, and although action on the judgment in California is barred, this section enables a judgment creditor to file suit in the District of Columbia without any limitation as to time.

Such a construction of Section 343 would render it totally inoperative to accomplish the purpose obviously intended by its enactment.

Petitioner contends that the Court below did not give to the California judgment full faith and credit as required by Sec. 1 of Article IV of the Constitution and by Sec. 34 of the Federal Judiciary Act.

Under its decision this judgment is given the same effect as it had in California. No more is required and no more should be given. To hold otherwise would improperly ex-

tend the full faith and credit doctrine and deprive respondents of the right to interpose the same defense to a suit in the District of Columbia as could have been interposed had suit been filed thereon in the courts of California.

The opinion of the Court below (R. 17-24) clearly expresses these principles and reference is made to it.

It is respectfully submitted that the Court below has not committed any of the errors assigned by petitioner as reasons for granting the writ and that the petition should be denied.

ARTHUR HELLEN,
Attorney for Respondents
Raymond H. Pilson, Ethel S. Pilson and Paul W. Sampsell
Trustee in Bankruptcy of Raymond H. Pilson.
Colorado Building,
Washington, D. C.